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CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 2251**

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**Introduced by Assembly Member Mark Stone**  
**(Coauthors: Assembly Members Dababneh and Gonzalez)**  
(Coauthor: Senator Leno)

February 18, 2016

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An act to add Division 12.5 (commencing with Section 28100) to the Financial Code, relating to student loan servicers.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2251, as amended, Mark Stone. Student loan servicers: licensing and regulation: Student Loan ~~Borrower's Bill of Rights~~. *Servicing Act*.

(1) Existing law establishes the Department of Business Oversight as headed by the Commissioner of Business Oversight, who, among other things, generally provides for the licensure and regulation of persons who are engaged in various consumer financial businesses, including, but not limited to, the business of making consumer or commercial loans.

This bill would enact the Student Loan ~~Borrower's Bill of Rights~~ *Servicing Act* providing for the licensure, regulation, and oversight of

student loan servicers by the commissioner and would define terms for its purposes. The bill would prohibit a person from acting as a student loan servicer without a license, unless exempt from the licensing requirement, and would require a licensee to provide specific services to a student loan borrower and comply with reporting, auditing, and other oversight by the commissioner. The bill would require a person applying for a license to, among other things, pay an application fee, sign the application under penalty of perjury, and submit to a criminal background check by the Department of Justice. By expanding the scope of the crime of perjury and increasing who is authorized to receive criminal record information, this bill would impose a state-mandated local program. ~~The bill would specify the basis for the commissioner to deny, revoke, or suspend a license that includes, among other bases, a failure to comply with an investigation by the commissioner. The bill would make legislative findings in support of its provisions.~~ The bill would require each licensee to pay to the commissioner its pro rata share of all costs and expenses reasonably incurred in the administration of these provisions, as estimated by the commissioner, and would authorize the commissioner to enforce these provisions by, among other things, promulgating regulations, performing investigations, and enforcing the provisions in a hearing or court, as specified. The bill would prohibit the public disclosure of specific information provided by a licensee to the commissioner. *The bill would make the act operative on July 1, 2018, except for specific authorizations to the commissioner which may be exercised on and after January 1, 2017. The bill would make legislative findings in support of its provisions.*

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. The Legislature finds and declares all of the  
2 following:

3     (a) Student loan debt is a national crisis. More than 40,000,000  
4 people in the United States owe some amount of student  
5 educational loan debt. Total student educational debt in the United  
6 States currently exceeds \$1.2 trillion, surpassing both the amount  
7 of credit card debt and car loans. With college costs continuing to  
8 rise, student educational debt continues to rise, and there is no  
9 reduction in sight.

10    (b) While California's financial aid programs are some of the  
11 strongest in the nation and our state's college graduates have among  
12 the lowest educational debt burdens, California students and  
13 graduates still incur significant debt. According to the Institute for  
14 College Access & Success, 55 percent of California's graduating  
15 class of 2014 has student educational loan debt. According to the  
16 United States Department of Education, as of January 2015, there  
17 ~~were~~ *are* approximately 4,156,000 student educational loan  
18 borrowers in California, and the total student educational loan debt  
19 outstanding for Californians ~~was~~ *is* approximately \$1.2 billion.

20    (c) Student educational loan debt is a hindrance on the state's  
21 economy, preventing borrowers from achieving financial  
22 independence, buying property, and starting businesses.

23    (d) Student educational loan servicers administer student loans,  
24 serving as a critical link between borrowers and lenders in  
25 managing accounts, processing payments, and communicating  
26 directly with borrowers. Despite this critical relationship, according  
27 to the federal Consumer Financial Protection Bureau (CFPB), there  
28 are no consistent, marketwide federal standards for student  
29 educational loan servicing.

30    (e) The CFPB released a report in September 2015 that found  
31 that student educational loan borrowers encounter servicers that  
32 discourage borrower-friendly alternative payment plans, fail to  
33 respond to questions and payment processing errors, and fail to  
34 provide sufficient information to borrowers regarding payments,  
35 benefits, interest rates, and other charges.

36    (f) It is the intent of the Legislature to promote all of the  
37 following:

1 (1) Meaningful access to federal affordable repayment and loan  
2 forgiveness benefits.

3 (2) Reliable information about student educational loans and  
4 loan repayment options.

5 (3) Quality customer service and fair treatment.

6 SEC. 2. Division 12.5 (commencing with Section 28100) is  
7 added to the Financial Code, to read:

8  
9 ~~DIVISION 12.5. CALIFORNIA STUDENT LOAN~~  
10 ~~BORROWER'S BILL OF RIGHTS STUDENT LOAN SERVICING~~  
11 ~~ACT~~  
12

13 CHAPTER 1. GENERAL PROVISIONS  
14

15 Article 1. Short Title  
16

17 28100. This division may be known and cited as the "~~California~~  
18 ~~Student Loan Borrower's Bill of Rights.~~" "*Student Loan Servicing*  
19 *Act.*"  
20

21 Article 2. Requirement for License  
22

23 28106. (a) A person shall only engage in the business of  
24 servicing a student loan within this state, directly or indirectly, as  
25 a licensee pursuant to this division. A license shall not be  
26 transferable or assignable.

27 (b) Notwithstanding subdivision (a), any of the following shall  
28 not be required to be a licensee to engage in servicing a student  
29 loan within this state:

30 (1) A bank, trust company, ~~insurance company~~, or industrial  
31 loan company doing business under the authority of, or in  
32 accordance with, a license, certificate, or charter issued by the  
33 United States or any state, district, territory, or commonwealth of  
34 the United States that is authorized to transact business in this  
35 state.

36 (2) A federally chartered savings and loan association, federal  
37 savings bank, or federal credit union that is authorized to transact  
38 business in this state.

1 (3) A savings and loan association, savings bank, or credit union  
2 organized under the laws of this or any other state that is authorized  
3 to transact business in this state.

4 (4) A nonprofit postsecondary educational institution servicing  
5 a student loan it extended to the borrower.

6 (5) A person who is licensed in good standing pursuant to the  
7 California Finance Lenders Law (Division 9 (commencing with  
8 Section 22000)) and services student loans pursuant to Section  
9 22340.

10  
11 Article 3. Definitions  
12

13 28108. For the purposes of this division, the following terms  
14 have the following meanings:

15 (a) “Applicant” means a person applying for a license pursuant  
16 to this division.

17 (b) “Borrower” means either of the following:

18 (1) A person who has received or agreed to pay a student loan.

19 (2) A person who shares responsibility for repaying a student  
20 loan with a person described in paragraph (1).

21 (c) “Commissioner” means the Commissioner of Business  
22 Oversight.

23 (d) “Department” means the Department of Business Oversight.

24 (e) “Engage in the business” ~~means the dissemination to the~~  
25 ~~public, or any part of the public, by means of written, printed, or~~  
26 ~~electronic communication or any communication by means of~~  
27 ~~recorded telephone messages or spoken on radio, television, or~~  
28 ~~similar communications media, of any information relating to the~~  
29 ~~servicing of student loans. “Engage in the business” also means,~~  
30 without limitation, servicing student loans.

31 (f) “In this state” means any activity of a person relating to  
32 servicing student loans that originates from this state and is directed  
33 to persons outside this state, or that originates from outside this  
34 state and is directed to persons inside this state, or that originates  
35 inside this state and is directed to persons inside this state, ~~or that~~  
36 ~~leads to the formation of a contract and the offer or acceptance~~  
37 ~~thereof is directed to a person in this state, whether from inside or~~  
38 ~~outside this state and whether the offer was made inside or outside~~  
39 this state.

40 (g) “Licensee” means a person licensed pursuant to this division.

(h) “Person” means an individual, a corporation, a partnership, a limited liability company, ~~a joint venture~~, an association, ~~a joint stock company~~, a trust, an unincorporated organization, a government, or a political subdivision of a government, and any other entity.

(i) “Qualified written request” means a written correspondence made by a borrower, other than notice on a payment medium supplied by a licensee, that is transmitted by mail, facsimile, or electronically through an email address or Internet Web site designated by the licensee to receive communications from a borrower that does all of the following:

(1) Enables the licensee to identify the name and account of the borrower.

~~(2) Requests, in sufficient detail, to the extent applicable, any of the following:~~

~~(A) Information sought by the borrower, including, but not limited to, a complete payment history of the student loan or the borrower’s account, the promissory note, and the contact information for the creditor to whom the student loan is owed.~~

~~(B) A statement of the reasons for the belief of the borrower that there is an error regarding the account of the borrower.~~

*(2) Includes a statement of the reasons for the belief by the borrower, to the extent applicable, that the account is in error or that provides sufficient detail to the servicer regarding information sought by the borrower, such as a complete payment history for the loan or the borrower’s account, a copy of the borrower’s student loan promissory note, or the contact information for the creditor to whom the borrower’s student loan is owed.*

(j) “Servicing” means any of the following activities related to a student loan of a borrower:

(1) Performing both of the following:

(A) Receiving any scheduled periodic payments from a borrower or any notification that a borrower made a scheduled periodic payment.

(B) Applying payments to the borrower’s account pursuant to the terms of the student loan or the contract governing the servicing.

(2) During a period when no payment is required on a student loan, performing both of the following:

(A) Maintaining account records for the student loan.

(B) Communicating with the borrower regarding the student loan on behalf of the ~~student loan's holder~~. *owner of the student loan promissory note.*

(3) ~~Interactions~~ *Interacting* with a borrower, including, but not limited to, ~~activities to help prevent borrower related to that borrower's student loan, with the goal of helping the borrower avoid default on obligations arising from a his or her student loan~~ or ~~conducted to facilitate~~ *facilitating* the activities described in paragraph (1) or (2).

(k) "Student loan" means any loan primarily for use to finance a postsecondary education and costs of attendance at ~~the a~~ postsecondary institution, including, but not limited to, tuition, fees, books and supplies, room and board, transportation, and miscellaneous personal expenses.

(l) "Student loan servicer" means any person engaged in the business of servicing student loans.

## CHAPTER 2. LICENSING

### Article 1. Commissioner of Business Oversight

28110. (a) The commissioner shall administer the provisions of this ~~division~~. *division and may promulgate regulations and issue orders consistent with that authority.*

~~(b) The commissioner may promulgate regulations and issue orders to further the purposes of this division.~~

(e)

(b) Without limitation, the functions, powers, and duties of the commissioner include all of the following:

(1) To issue or refuse to issue a license as provided by this division.

(2) To revoke or suspend for cause any license as provided by this division.

(3) To keep records of licenses issued under this division.

(4) To receive, consider, investigate, and act upon complaints made in connection with a licensee.

(5) To prescribe the forms of and receive (A) applications for licenses and (B) reports, books, and records required to be made by a licensee under this division, including annual audited financial statements.

1 (6) To subpoena documents and witnesses and compel their  
2 attendance and production, to administer oaths, and to require the  
3 production of books, papers, or other materials relevant to any  
4 inquiry authorized by this division.

5 (7) To require information with regard to an applicant that the  
6 commissioner may deem necessary, with regard for the paramount  
7 public interest in ascertaining the experience, background, honesty,  
8 truthfulness, integrity, and competency of an applicant for servicing  
9 student loans, and if an applicant is an entity other than an  
10 individual, in ascertaining the honesty, truthfulness, integrity, and  
11 competency of an officer or director of the corporation, association,  
12 or other entity, or the members of a partnership.

13 (8) To enforce by order any provision of this division.

14 (9) To levy fees, fines, and charges in an amount sufficient to  
15 cover the cost of the services performed in administering this  
16 division, as set forth by rule.

17 (10) To appoint examiners, supervisors, experts, and special  
18 assistants as needed to effectively and efficiently administer this  
19 division.

20 28112. (a) The commissioner shall have the authority to  
21 conduct investigations and examinations of an applicant or licensee  
22 as follows:

23 (1) For purposes of determining whether an applicant is eligible  
24 for a license, or that a licensee is complying with the provisions  
25 of this division or any regulation or order of the commissioner,  
26 the commissioner may access, receive, and use any books,  
27 accounts, records, files, documents, information, or evidence,  
28 including, but not limited to, any of the following relating to the  
29 intent to, or the practice of, servicing student loans for borrowers:

30 (A) Criminal, civil, and administrative history information.

31 (B) Personal history and experience information, including, but  
32 not limited to, independent credit reports obtained from a consumer  
33 credit reporting agency.

34 (C) Any other documents, information, or evidence that the  
35 commissioner deems relevant to the inquiry or investigation  
36 regardless of the location, possession, control, or custody of those  
37 documents, information, or evidence.

38 (2) For the purposes of investigating violations or complaints  
39 arising under this division, the commissioner may direct, subpoena,  
40 or order the attendance of, and examine under oath, any person



1 whose testimony may be required about the student loan or account  
2 of the borrower.

3 (b) In making any examination or investigation authorized by  
4 this section, the commissioner may control access to any documents  
5 and records of the licensee or person under examination or  
6 investigation. The commissioner may take possession of the  
7 documents and records or place a person in exclusive charge of  
8 the documents and records in the place where they are usually  
9 kept. During the period of control, no person shall remove or  
10 attempt to remove any of the documents and records except  
11 pursuant to a court order or with the consent of the commissioner.  
12 Unless the commissioner has reasonable grounds to believe the  
13 documents or records of an applicant have been, or are at risk of  
14 being, altered or destroyed for purposes of concealing a violation  
15 of this division, the licensee or owner of the documents and records  
16 shall have access to the documents or records as necessary to  
17 conduct its ordinary business affairs.

18 28114. (a) Notwithstanding any other law, the commissioner  
19 may by rule or order prescribe circumstances under which to accept  
20 electronic records or electronic signatures. This section shall not  
21 be deemed to require the commissioner to accept electronic records  
22 or electronic signatures.

23 (b) For purposes of this section, the following terms have the  
24 following meanings:

25 (1) "Electronic record" means an initial license application, or  
26 material modification of that license application, and any other  
27 record created, generated, sent, communicated, received, or stored  
28 by electronic means. "Electronic records" also includes, but is not  
29 limited to, all of the following:

30 (A) An application, amendment, supplement, and exhibit, filed  
31 for any license, consent, or other authority.

32 (B) A financial statement, report, or advertising.

33 (C) An order, license, consent, or other authority.

34 (D) A notice of public hearing, accusation, and statement of  
35 issues in connection with any application, license, consent, or other  
36 authority.

37 (E) A proposed decision of a hearing officer and a decision of  
38 the commissioner.

39 (F) The transcripts of a hearing and correspondence between a  
40 party and the commissioner directly relating to the record.

1 (G) A release, newsletter, interpretive opinion, determination,  
2 or specific ruling.

3 (H) Correspondence between a party and the commissioner  
4 directly relating to any document listed in subparagraphs (A) to  
5 (G), inclusive.

6 (2) “Electronic signature” means an electronic sound, symbol,  
7 or process attached to or logically associated with an electronic  
8 record and executed or adopted by a person with the intent to sign  
9 the electronic record.

10 (c) The Legislature finds and declares that the Department of  
11 Business Oversight has continuously implemented methods to  
12 accept records filed electronically, and is encouraged to continue  
13 to expand its use of electronic filings to the extent feasible, as  
14 budget, resources, and equipment are made available to accomplish  
15 that goal.

## 16 Article 2. Application for License

17  
18  
19 28116. An applicant shall apply for a license by submitting all  
20 of the following to the commissioner:

21 (a) A completed application for a license in a form prescribed  
22 by the commissioner and signed under penalty of perjury.

23 (b) The sum of one hundred dollars (\$100) as a fee for  
24 investigating the application, plus the cost of fingerprint processing  
25 and the criminal history record check under Section 28118, and  
26 two hundred dollars (\$200) as an application fee. The investigation  
27 fee, including the amount for the criminal history record check,  
28 and the application fee are not refundable if an application is denied  
29 or withdrawn.

30 (c) Financial statements prepared in accordance with generally  
31 accepted accounting principles and acceptable to the commissioner  
32 that indicate a net worth of at least two hundred fifty thousand  
33 dollars (\$250,000).

34 28118. (a) The commissioner shall submit to the Department  
35 of Justice fingerprint images and related information required by  
36 the Department of Justice of every applicant for a license for  
37 purposes of obtaining information as to the existence and content  
38 of a record of state or federal convictions, state or federal arrests,  
39 and information as to the existence and content of a record of state  
40 or federal arrests for which the Department of Justice establishes

1 that the person is free on bail or on his or her own recognizance  
2 pending trial or appeal.

3 (b) When received, the Department of Justice shall forward to  
4 the Federal Bureau of Investigation requests for federal summary  
5 criminal history information received pursuant to this section. The  
6 Department of Justice shall review the information returned from  
7 the Federal Bureau of Investigation and compile and disseminate  
8 a response to the commissioner.

9 (c) The Department of Justice shall provide a response to the  
10 commissioner pursuant to paragraph (1) of subdivision (p) of  
11 Section 11105 of the Penal Code.

12 (d) The commissioner shall request from the Department of  
13 Justice subsequent arrest notification service, as provided pursuant  
14 to Section 11105.2 of the Penal Code, for the license applicant  
15 described in subdivision (a).

16 (e) The Department of Justice shall charge the applicant a fee  
17 sufficient to cover the costs of processing the requests pursuant to  
18 this section.

19 28120. (a) Upon the filing of an application for a license  
20 pursuant to Section 28116 and the payment of the fees, the  
21 commissioner shall investigate the applicant and its general partners  
22 and persons owning or controlling, directly or indirectly, 10 percent  
23 or more of the outstanding interests or any person responsible for  
24 the conduct of the applicant's servicing activities within this state,  
25 if the applicant is a partnership. If the applicant is a corporation,  
26 trust, limited liability company, or association, including an  
27 unincorporated organization, the commissioner shall investigate  
28 the applicant, its principal officers, directors, managing members,  
29 and persons owning or controlling, directly or indirectly, 10 percent  
30 or more of the outstanding equity securities or any person  
31 responsible for the conduct of the applicant's servicing activities  
32 within this state.

33 (b) Upon the filing of an application for a license pursuant to  
34 Section 28130 and the payment of the fees, the commissioner shall  
35 investigate the person responsible for the servicing activity of the  
36 licensee at the new location described in the application. The  
37 investigation may be limited to information that was not included  
38 in prior applications filed pursuant to this division. If the  
39 commissioner determines that the applicant has satisfied this

1 division and does not find facts constituting reasons for denial, the  
2 commissioner shall issue and deliver a license to the applicant.

3 (c) For the purposes of this section, “principal officers” shall  
4 mean president, chief executive officer, treasurer, and chief  
5 financial officer, as may be applicable, and any other officer with  
6 direct responsibility for the conduct of the applicant’s servicing  
7 activities within the state.

8 28122. The commissioner shall, when the application is  
9 complete, including having received the information from the  
10 Department of Justice, either grant a license pursuant to this  
11 division or provide a written explanation for the denial.

12 28124. (a) The proceedings for a denial of a license shall be  
13 conducted in accordance with Chapter 5 (commencing with Section  
14 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

15 (b) The commissioner may deny an application for a license for  
16 any of the following reasons:

17 (1) The applicant made a false statement of a material fact on  
18 the application.

19 (2) The applicant or an individual specified in Section 28120  
20 within the last 10 years of the date of application has committed  
21 any act involving dishonesty, fraud, or deceit, or has been convicted  
22 of, or pleaded nolo contendere to, a crime substantially related to  
23 the qualifications, functions, or duties related to servicing.

24 (3) The applicant or an individual specified in Section 28120  
25 has violated any provision of this division.

26 28126. (a) The commissioner may deem an application for a  
27 license abandoned if the applicant fails to respond to any request  
28 for information required by the commissioner or department during  
29 an investigation of the application.

30 (b) The commissioner shall notify the applicant, in writing, that  
31 if the applicant fails to submit responsive information no later than  
32 60 days after the date the commissioner sent the written request  
33 for information, the commissioner shall deem the application  
34 abandoned.

35 (c) An application fee paid prior to the date an application is  
36 deemed abandoned shall not be refunded. Abandonment of an  
37 application pursuant to this subdivision shall not preclude the  
38 applicant from submitting a new application and fee for a license.

1 28128. A license shall remain effective until the license is  
2 either suspended or revoked by the commissioner or surrendered  
3 by the licensee.

4  
5 CHAPTER 3. LICENSEE DUTIES  
6

7 28130. (a) A licensee shall notify the commissioner, in writing,  
8 of any change in the information provided in the application for a  
9 license, as applicable, not later than 10 business days after the  
10 occurrence of the event that results in the information becoming  
11 inaccurate or incomplete.

12 (b) (1) If a licensee seeks to change its place of business to a  
13 street address other than that designated in its license, the licensee  
14 shall provide notice to the commissioner at least 10 days prior to  
15 the change. The commissioner shall notify the licensee within 10  
16 days if the commissioner disapproves the change, and if the  
17 commissioner does not notify the licensee of disapproval within  
18 10 days, the change in address shall be deemed approved.

19 (2) If notice is not given at least 10 days prior to the change of  
20 a street address of a place of business, as required by subdivision  
21 (b), or notice is not given at least 10 days prior to engaging in  
22 business at a new location, the commissioner may assess a civil  
23 or administrative penalty on the licensee not to exceed five hundred  
24 dollars (\$500).

25 28132. (a) A licensee seeking to engage in the business of  
26 servicing at a new location shall submit an application for a branch  
27 office license to the commissioner at least 10 days before engaging  
28 in the business of servicing at a new location and pay the fee  
29 required by Section 28116.

30 (b) The licensee may engage in the business of servicing at the  
31 new location 10 days after the date of submission of a branch office  
32 application.

33 (c) (1) The commissioner shall approve or deny the person  
34 responsible for engaging in the business of servicing at the new  
35 location in accordance with Article 2 of Chapter 2 (commencing  
36 with Section 28116), and shall notify the licensee of this decision  
37 within 90 days of the date of receipt of the application.

38 (2) If the commissioner denies the application, the licensee shall,  
39 within 10 days of the date of receipt of notification of the  
40 commissioner's denial, submit a new application to the

1 commissioner designating a different person responsible for  
2 engaging in the business of servicing at the new location. The  
3 commissioner shall approve or deny the different person as  
4 provided in paragraph (1).

5 (d) A licensee shall not engage in business at a new location in  
6 a name other than a name approved by the commissioner.

7 (e) A branch office license to engage in the business of servicing  
8 at a new location shall be issued in accordance with this section.  
9 A change of street address of a place of business designated in a  
10 license shall be made in accordance with Section 28130 and shall  
11 not constitute a new location subject to the requirements of this  
12 section.

13 28134. A licensee shall do all of the following:

14 ~~(a) Maintain staff adequate to meet the requirements of this~~  
15 ~~division and every regulation and order of the commissioner.~~

16 *(a) Develop policies and procedures reasonably intended to*  
17 *promote compliance with this division.*

18 (b) File with the commissioner any report required by regulation  
19 or order of the commissioner.

20 (c) Comply with the provisions of this division and any  
21 regulation or order of the commissioner.

22 (d) Submit to periodic examination by the commissioner as  
23 required by this division and any regulation or order of the  
24 commissioner.

25 (e) Advise the commissioner of filing a petition for bankruptcy  
26 within five days of the filing.

27 ~~(f) Comply with all applicable state and federal laws and tax~~  
28 ~~return filing requirements.~~

29 ~~(g)~~

30 (f) Comply with any other requirement established by regulation  
31 or order of the commissioner.

32 ~~(h) Provide information on a publicly accessible~~

33 ~~(g) Provide, free of charge on its Internet Web site concerning~~  
34 ~~affordable site, information or links to information regarding~~  
35 ~~repayment and loan forgiveness options that may be available to~~  
36 ~~borrowers and provide this information or these links to borrowers,~~  
37 ~~at least once per calendar year, a borrowers via written~~  
38 ~~correspondence or email describing those options, as applicable.~~  
39 *at least once per calendar year.*

1 ~~(i) Appoint a single point of contact for a borrower wanting any~~  
2 ~~of the following:~~

3 ~~(j)~~

4 (h) (1) Respond to a qualified written request by acknowledging  
5 receipt of the request within five business days and within 30  
6 business days, to the extent possible, provide information relating  
7 to the request ~~and the applicable~~ *and, if applicable, the* action the  
8 licensee will take to correct the account or an explanation for the  
9 licensee's position that the borrower's account is correct.

10 (2) The 30-day period described in paragraph (1) may be  
11 extended for not more than 15 days if, before the end of the 30-day  
12 period, the servicer notifies the borrower of the extension and the  
13 reasons for the delay in responding.

14 (3) During the 60-business-day period starting on the date the  
15 servicer received a qualified written request related to a dispute  
16 on borrower's payments, a servicer shall not provide adverse  
17 information regarding any payment that is the subject of the  
18 qualified written request to any consumer reporting agency.

19 ~~(j)~~

20 (i) (1) Except as provided in federal law or required by a student  
21 loan agreement, a servicer shall inquire of a borrower how to apply  
22 an overpayment to a student loan. A borrower's direction on how  
23 to apply an overpayment to a student loan shall stay in effect for  
24 any future overpayments during the term of a student loan until  
25 the borrower provides different directions.

26 (2) For purposes of this subdivision, "overpayment" means a  
27 payment on a student loan in excess of the amount due from a  
28 borrower on a student loan on a monthly basis, also commonly  
29 referred to as a prepayment.

30 28135. (a) *A licensee shall not be required to comply with the*  
31 *requirements of subdivision (h) of Section 28134, if the licensee*  
32 *reasonably determines that any of the following apply:*

33 (1) *A qualified written request is substantially the same as a*  
34 *qualified written request previously made by the borrower, for*  
35 *which the licensee has previously complied with its obligation to*  
36 *respond pursuant to subdivision (h) of Section 28134, unless the*  
37 *borrower provides new and material information to support the*  
38 *more recent qualified written request. New and material*  
39 *information means information that was not reviewed by the*  
40 *licensee in connection with a prior qualified written request*

1 *submitted by the same borrower and that is reasonably likely to*  
2 *change the licensee's prior response related to that request.*

3 *(2) A qualified written request is overbroad. A qualified written*  
4 *request is overbroad if the licensee cannot reasonably determine*  
5 *from the qualified written request the specific error that the*  
6 *borrower asserts has occurred on his or her account or the specific*  
7 *information the borrower is requesting related to his or her*  
8 *account. To the extent a licensee can reasonably identify a valid*  
9 *assertion of an error or valid request for information in a qualified*  
10 *written request that is otherwise overbroad, the licensee shall*  
11 *comply with the requirements of subdivision (h) of Section 28134*  
12 *with respect to that valid asserted error or request for information.*

13 *(3) A qualified written request is delivered to the licensee more*  
14 *than one year after the licensee sells, assigns, or transfers the*  
15 *servicing of the student loan that is the subject of the qualified*  
16 *written request to another servicer.*

17 *(b) If, pursuant to subdivision (a), a licensee determines that it*  
18 *is not required to comply with the requirements of subdivision (h)*  
19 *of Section 28134, the licensee shall notify the borrower of the*  
20 *determination, and the basis for its determination, in writing not*  
21 *later than five business days after making such determination.*

22 28136. (a) If the sale, assignment, or other transfer of the  
23 servicing of a student loan results in a change in the identity of the  
24 party to whom the borrower is required to send payments or direct  
25 any communications concerning the student loan ~~to, then~~ the  
26 licensee shall notify the borrower in writing at least 15 days before  
27 a *the* borrower is required to send a payment on the student loan  
28 of all of the following:

29 (1) The identity of the new student loan servicer and the number  
30 of the license of the new student loan servicer issued by the  
31 commissioner.

32 (2) The name and address of the new student loan servicer to  
33 whom subsequent payments or communications are required to  
34 be sent.

35 (3) The telephone numbers and Internet Web sites of the new  
36 student loan servicer.

37 (4) The effective date of the sale, assignment, or transfer.

38 (5) The date on which the licensee, as the current student loan  
39 servicer, will stop accepting payments on the borrower's student  
40 loan.



1 (6) The date on which the new student loan servicer will begin  
2 accepting payments on the borrower's student loan.

3 (b) A licensee shall transfer all information regarding a  
4 borrower, a borrower's account, and a borrower's student loan to  
5 the new licensee servicing the borrower's student loan within 45  
6 calendar days.

7 ~~28138. A licensee shall notify the commissioner before selling,~~  
8 ~~assigning, or otherwise transferring the servicing of a student loan~~  
9 ~~that results in a change in the identity of the party to whom a~~  
10 ~~borrower is required to send payments or direct any~~  
11 ~~communications concerning the student loan to, in a manner and~~  
12 ~~time prescribed by the commissioner.~~

13 28140. The licensee shall not do any of the following:

14 (a) Directly or indirectly employ any scheme, device, or artifice  
15 to defraud or mislead a borrower.

16 (b) Engage in any unfair or deceptive practice toward any  
17 borrower or misrepresent or omit any material information in  
18 connection with the servicing of a student loan, including, but not  
19 limited to, misrepresenting the amount, nature, or terms of any fee  
20 or payment due or claimed to be due on a student loan, the terms  
21 and conditions of the student loan agreement, or the borrower's  
22 obligations under the student loan.

23 ~~(e) Obtain property of a borrower by fraud or misrepresentation.~~

24 ~~(d)~~

25 (c) Misapply payments made by a borrower to the outstanding  
26 balance of a student loan.

27 ~~(e) Provide inaccurate information to a credit bureau regarding~~  
28 ~~a borrower.~~

29 ~~(f) Fail to report both the favorable and unfavorable payment~~  
30 ~~history of the borrower to a nationally recognized consumer credit~~  
31 ~~bureau at least annually if the licensee regularly reports information~~  
32 ~~to a credit bureau.~~

33 *(d) Fail to accurately report each borrower's payment*  
34 *performance to at least one consumer reporting agency that*  
35 *compiles and maintains files on consumers on a nationwide basis,*  
36 *upon acceptance as a data furnisher by that consumer reporting*  
37 *agency. For purposes of this subdivision, a consumer reporting*  
38 *agency that compiles and maintains files on consumers on a*  
39 *nationwide basis is one that meets the definition in Section 603(p)*  
40 *of the federal Fair Credit Reporting Act (15 USC Sec. 1681a(p)).*

1     ~~(g)~~

2     ~~(e)~~ Refuse to communicate with an authorized representative  
3 of the borrower who provides a written authorization signed by  
4 the borrower, provided the licensee may adopt procedures  
5 reasonably related to verifying that the representative is in fact  
6 authorized to act on behalf of the borrower.

7     ~~(h)~~

8     ~~(f)~~ Negligently or intentionally make any false statement or  
9 knowingly and willfully make any omission of a material fact in  
10 connection with any information or reports filed with the  
11 commissioner, the department, or another governmental agency.

12     28142. ~~The~~ *Notwithstanding subdivision (b) of Section 28136,*  
13 *a* licensee shall retain and maintain its records of servicing a  
14 borrower's student loan for a minimum of three years after the  
15 student loan has been *sold*, transferred, assigned, or paid in full.

16     28144. A licensee shall continuously maintain a minimum net  
17 worth of at least two hundred fifty thousand dollars (\$250,000).

18     28146. (a) A licensee shall maintain a surety bond in  
19 accordance with this section in a minimum amount of twenty-five  
20 thousand dollars (\$25,000). The bond shall be payable to the  
21 commissioner and issued by an insurer authorized to do business  
22 in this state. An original surety bond, including any and all riders  
23 and endorsements executed subsequent to the effective date of the  
24 bond, shall be filed with the commissioner within 10 days of  
25 execution. For licensees with multiple licensed locations, only one  
26 surety bond is required. The bond shall be used for the recovery  
27 of expenses, fines, and fees levied by the commissioner in  
28 accordance with this division or for losses or damages incurred by  
29 borrowers as the result of a licensee's noncompliance with the  
30 requirements of this division.

31     (b) When an action is commenced on a licensee's bond, the  
32 commissioner may require the filing of a new bond. Immediately  
33 upon recovery of any action on the bond, the licensee shall file a  
34 new bond. Failure to file a new bond within 10 days of the recovery  
35 on a bond, or within 10 days after notification by the commissioner  
36 that a new bond is required, constitutes sufficient grounds for the  
37 suspension or revocation of the license.

38     (c) The commissioner may by rule require a higher bond amount  
39 for a licensee based on the dollar amount of servicing of student  
40 loans by that licensee.

1     ~~28147. (a) At the time of filing an application for a license~~  
2 ~~pursuant to this division, an applicant shall deposit with the~~  
3 ~~commissioner a bond satisfactory to the commissioner in the~~  
4 ~~amount of at least twenty-five thousand dollars (\$25,000). The~~  
5 ~~bond required by this section shall run to the state for the use of~~  
6 ~~the state and for any person who has cause against a licensee under~~  
7 ~~any provision of this division. A deposit given instead of the bond~~  
8 ~~required by this section shall not be deemed an asset of the~~  
9 ~~applicant or licensee for the purpose of complying with Section~~  
10 ~~17210. An applicant or licensee may obtain an irrevocable letter~~  
11 ~~of credit approved by the commissioner in lieu of the bond.~~

12     ~~(b) An applicant for a license pursuant to this division or a~~  
13 ~~licensee may, in lieu of and subject to the same conditions as the~~  
14 ~~bond required by subdivision (a), deposit with the commissioner~~  
15 ~~a cash bond in the sum specified in subdivision (a). Evidence of~~  
16 ~~the cash bond shall be a deposit in the amount specified in~~  
17 ~~subdivision (a) in a bank or investment certificates of industrial~~  
18 ~~loan companies, authorized to do business in this state and insured~~  
19 ~~by the Federal Deposit Insurance Corporation, or an investment~~  
20 ~~certificate or share account in the amount specified in subdivision~~  
21 ~~(a) issued by a savings and loan association doing business in this~~  
22 ~~state and insured by the Federal Savings and Loan Insurance~~  
23 ~~Corporation. Those deposits, certificates, or accounts shall be~~  
24 ~~assigned to and accepted and maintained by the commissioner,~~  
25 ~~upon those terms as the commissioner may prescribe, until released~~  
26 ~~by the commissioner, and shall not be deemed an asset of an~~  
27 ~~applicant or licensee for the purpose of complying with Section~~  
28 ~~28144.~~

29     ~~(c) The bond shall be conditioned that the licensee will faithfully~~  
30 ~~conform to and abide by the provisions of this division and all the~~  
31 ~~rules made by the commissioner under this division. The bond~~  
32 ~~shall be conditioned that the licensee will honestly and faithfully~~  
33 ~~apply all funds received, will faithfully and honestly perform all~~  
34 ~~obligations and undertakings under this division, and will pay to~~  
35 ~~the state, borrower, and any person all amounts which become due~~  
36 ~~or owing to the state or to such borrower or person under the~~  
37 ~~provisions of this division. In determining the liability of the~~  
38 ~~principal and the sureties under the bond, money held in trust and~~  
39 ~~any money recovered to restore any deficiency in the trust shall~~  
40 ~~not be considered as an asset of the liquidation subject to~~

1 ~~assessment for the cost of the liquidation. The surety under the~~  
2 ~~bond may pay the full amount of its liability thereunder to the~~  
3 ~~commissioner in lieu of payment to the state, borrower, or persons~~  
4 ~~having a cause of action against the licensee, and upon such~~  
5 ~~payment the surety is completely released from further liability~~  
6 ~~under the bond.~~

7 28148. (a) Each licensee shall pay to the commissioner its pro  
8 rata share of all costs and expenses reasonably incurred in the  
9 administration of this division, as estimated by the commissioner,  
10 for the ensuing year and any deficit actually incurred or anticipated  
11 in the administration of the division in the year in which the  
12 assessment is made. The pro rata share shall be the proportion that  
13 a licensee's servicing activities within this state bears to the costs  
14 and expenses remaining after the amount assessed pursuant to  
15 subdivision (c).

16 (b) On or before the 30th day of September in each year, the  
17 commissioner shall notify each licensee of the amount assessed  
18 and levied against it and that amount shall be paid by October 31.  
19 If payment is not made by October 31, the commissioner shall  
20 assess and collect a penalty, in addition to the assessment, of 1  
21 percent of the assessment for each month or part of a month that  
22 the payment is delayed or withheld.

23 (c) In the levying and collection of the assessment, a licensee  
24 shall neither be assessed for nor be permitted to pay less than two  
25 hundred fifty dollars (\$250) per licensed location per year.

26 (d) If a licensee fails to pay the assessment on or before the 31st  
27 day of October, the commissioner may by order summarily suspend  
28 or revoke the license issued to the licensee. If, after an order is  
29 made, a request for hearing is filed in writing within 30 days, and  
30 a hearing is not held within 60 days thereafter, the order is deemed  
31 rescinded as of its effective date. During any period when the  
32 license is revoked or suspended, a licensee shall not engage in the  
33 business of servicing student loans within this state pursuant to  
34 this division except as may be permitted by order of the  
35 commissioner. However, the revocation, suspension, or surrender  
36 of a license shall not affect the powers of the commissioner as  
37 provided in this division.

38 (e) The commissioner shall, by rule, establish the timelines,  
39 fees, and assessments applicable to applicants for licenses under  
40 this division.

1     28150. (a) (1) A licensee shall file an annual report with the  
2 commissioner, on or before the 15th day of March, giving the  
3 relevant information that the commissioner reasonably requires  
4 concerning the business and operations conducted by the licensee  
5 within the state during the preceding calendar ~~year~~; *year, including*  
6 *information regarding the number of loans that are sold, assigned,*  
7 *or transferred to another party.* The individual annual reports filed  
8 pursuant to this section shall be made available to the public for  
9 inspection except, upon request in the annual report to the  
10 commissioner, the balance sheet contained in the annual report of  
11 a sole proprietor or any other nonpublicly traded persons. The  
12 report shall be made under oath and in the form prescribed by the  
13 commissioner.

14     (2) “Nonpublicly traded person” for purposes of this section  
15 means persons with securities owned by 35 or fewer individuals.

16     (b) A licensee shall make other special reports that may be  
17 required by the commissioner.

18     28151. (a) *At the end of the licensee’s fiscal year, but in no*  
19 *case more than 12 months after the last audit conducted pursuant*  
20 *to this section, each licensee shall cause its books and accounts*  
21 *to be audited by an independent certified public accountant. The*  
22 *audit shall be sufficiently comprehensive in scope to permit the*  
23 *expression of an opinion on the financial statements prepared in*  
24 *accordance with generally accepted accounting principles and*  
25 *shall be performed in accordance with generally accepted auditing*  
26 *standards. The audit shall include a reconciliation of the licensee’s*  
27 *trust accounts as of the audit date.*

28     (b) “Expression of an opinion” *includes (1) an unqualified*  
29 *opinion, (2) a qualified opinion, (3) a disclaimer of opinion, or*  
30 *(4) an adverse opinion. If a financial statement, report, certificate,*  
31 *or opinion of the independent certified public accountant is in any*  
32 *way qualified, the commissioner may require the licensee to take*  
33 *any action that the commissioner deems appropriate to address*  
34 *the qualification. The commissioner may reject any financial*  
35 *statement, report, certificate, or opinion by notifying the licensee*  
36 *or other person required to make the filing of the rejection and*  
37 *the reason therefor. Within 30 days after the receipt of the notice,*  
38 *the licensee or other person shall correct the deficiencies. Failure*  
39 *to correct the deficiencies is a violation of this division. The*

1 commissioner shall retain a copy of all financial statements,  
2 reports, certificates, or opinions so rejected.

3 (c) If a qualified or adverse opinion is expressed or if an opinion  
4 is disclaimed, the reasons therefor shall be fully explained.

5 (d) The audit report shall be filed with the commissioner within  
6 105 days of the end of the licensee's fiscal year. The report filed  
7 with the commissioner shall be certified by the certified public  
8 accountant conducting the audit. The commissioner may  
9 promulgate rules regarding late audit reports.

10 (e) If a licensee required to make an audit fails to cause an audit  
11 to be made, the commissioner may cause the audit to be made by  
12 an independent certified public accountant at the licensee's  
13 expense. The commissioner shall select the independent certified  
14 public accountant by advertising for bids or by other fair and  
15 impartial means that the commissioner establishes by rule. The  
16 commissioner may summarily revoke the license of a licensee who  
17 fails to file a certified financial statement prepared by an  
18 independent certified public accountant as required by this division  
19 or at the request of the commissioner.

20 28152. A licensee that ceases to service student loans to  
21 borrowers shall inform the commissioner in writing and surrender  
22 the license and all other indicia of license to the commissioner.  
23 The commissioner may require a licensee to file a plan for the  
24 disposition of the servicing business that includes, but is not limited  
25 to, a closing audit. Upon receipt of the written notice and plan, if  
26 required, the commissioner shall determine whether the licensee  
27 has violated this division. The commissioner shall give a licensee  
28 notice of accepting a surrendered license, and a license shall not  
29 be deemed surrendered until the commissioner accepts its tender  
30 in writing.

31  
32 CHAPTER 4. ADMINISTRATION AND POWER OF THE  
33 COMMISSIONER  
34

35 28153. ~~(a) Notwithstanding any provision of this division,~~  
36 ~~the commissioner shall have the authority to waive one or more~~  
37 ~~branch office examinations, if the commissioner deems that the~~  
38 ~~branch office examinations are not necessary for the protection of~~  
39 ~~the public, due to the centralized operations of the licensee or other~~  
40 ~~factors acceptable to the commissioner.~~

1 ~~(b) The statement of the findings of an examination shall belong~~  
2 ~~to the commissioner and shall not be disclosed to anyone other~~  
3 ~~than the licensee, law enforcement officials, or other state or federal~~  
4 ~~regulatory agencies for further investigation and enforcement.~~  
5 ~~Reports required of licensees by the commissioner under this~~  
6 ~~division and results of examinations performed by the~~  
7 ~~commissioner under this division are the property of the~~  
8 ~~commissioner.~~

9 ~~(c) Affiliates of a licensee are subject to examination by the~~  
10 ~~commissioner on the same terms as the licensee, but only when~~  
11 ~~reports from, or examination of, a licensee provides documented~~  
12 ~~evidence of unlawful activity between a licensee and affiliate~~  
13 ~~benefiting, affecting, or arising from the activities regulated by~~  
14 ~~this division.~~

15 ~~(d) The cost of each examination of a licensee shall be paid to~~  
16 ~~the commissioner by the licensee examined, and the commissioner~~  
17 ~~may maintain an action for the recovery of the cost in any court~~  
18 ~~of competent jurisdiction. In determining the cost of the~~  
19 ~~examination, the commissioner may use the estimated average~~  
20 ~~hourly cost for all persons performing examinations of licensees~~  
21 ~~or other persons subject to this division for the fiscal year.~~

22 28154. (a) As often as the commissioner deems necessary and  
23 appropriate, but at least once every 36 months, the commissioner  
24 shall examine the affairs of each licensee for compliance with this  
25 division. The commissioner shall appoint suitable persons to  
26 perform the examination. The commissioner and his or her  
27 appointees may examine the books, records, and documents of the  
28 licensee, and may examine the licensee's officers, directors,  
29 employees, or agents under oath regarding the licensee's  
30 operations. The commissioner may cooperate with any agency of  
31 the state, the federal government, or other ~~state~~. *states*. The  
32 commissioner may accept an examination conducted by one of  
33 these entities in place of an examination by the commissioner  
34 under this law, unless the commissioner determines that the  
35 examination does not provide information necessary to enable the  
36 commissioner to fulfill his or her responsibilities under this  
37 division.

38 *(b) Unless otherwise exempt pursuant to Section 28106, affiliates*  
39 *of a licensee are subject to examination by the commissioner on*  
40 *the same terms as the licensee, but only when reports from, or*

1 examination of, a licensee provides documented evidence of  
2 unlawful activity between a licensee and affiliate benefitting,  
3 affecting, or arising from the activities regulated by this division.

4 (c) The cost of each examination of a licensee shall be paid to  
5 the commissioner by the licensee examined, and the commissioner  
6 may maintain an action for the recovery of the cost in any court  
7 of competent jurisdiction. In determining the cost of the  
8 examination, the commissioner may use the estimated average  
9 hourly cost for all persons performing examinations of licensees  
10 or other persons subject to this division for the fiscal year.

11 (d) The statement of the findings of an examination shall belong  
12 to the commissioner and shall not be disclosed to anyone other  
13 than the licensee, law enforcement officials, or other state or  
14 federal regulatory agencies for further investigation and  
15 enforcement. Reports required of licensees by the commissioner  
16 under this division and results of examinations performed by the  
17 commissioner under this division are the property of the  
18 commissioner.

19 ~~(b)~~

20 (e) The commissioner shall provide a written statement of the  
21 findings of the examination, issue a copy of that statement to each  
22 licensee's principals, officers, or directors, and take appropriate  
23 steps to ensure correction of any violations of this division.

24 ~~(e) The licensee shall pay, and the commissioner shall assess,~~  
25 ~~the reasonable expenses of any examination of the licensee and~~  
26 ~~affiliates.~~

27 (f) Notwithstanding any provision of this division, the  
28 commissioner shall have the authority to waive one or more branch  
29 office examinations, if the commissioner deems that the branch  
30 office examinations are not necessary for the protection of the  
31 public, due to the centralized operations of the licensee or other  
32 factors acceptable to the commissioner.

#### 34 CHAPTER 5. ENFORCEMENT

35  
36 ~~28156. (a) The commissioner may, after notice and a~~  
37 ~~reasonable opportunity to be heard, deny, decline to renew,~~  
38 ~~suspend, or revoke any license if the commissioner finds that:~~

39 ~~(1) The licensee has violated any provision of this division or~~  
40 ~~any rule or order of the commissioner thereunder.~~



1     ~~(2) Any fact or condition exists that, if it had existed at the time~~  
2     ~~of the original application for the license, reasonably would have~~  
3     ~~warranted the commissioner in refusing to issue the license~~  
4     ~~originally.~~

5     ~~(b) The power of investigation and examination by the~~  
6     ~~commissioner is not terminated by the denial, nonrenewal,~~  
7     ~~surrender, suspension, or revocation of any license issued by him~~  
8     ~~or her.~~

9     28158. (a) If a licensee fails to do either of the following, the  
10    commissioner shall impose a penalty in a sum of up to one hundred  
11    dollars (\$100) for every day:

12    (1) To make any report required by law or by the commissioner  
13    within 10 days from the day designated for the making of the  
14    report, or within any extension of time granted by the  
15    commissioner.

16    (2) To include therein any matter required by law or by the  
17    commissioner.

18    (b) The commissioner may by order summarily suspend or  
19    revoke the license if a licensee fails to file any report required by  
20    this division.

21    28160. (a) If the commissioner has a reasonable basis to  
22    believe that a licensee is violating or failing to comply with this  
23    division or any regulation or order of the commissioner, or  
24    servicing student loans in an unsafe or injurious manner, then the  
25    commissioner may direct the licensee to comply with the law by  
26    an order issued by the commissioner. The order shall require the  
27    licensee to show cause before the commissioner, at a time and  
28    place to be fixed by the commissioner, as to why the order should  
29    not be observed.

30    (b) If, after investigation, the commissioner has reasonable  
31    grounds to believe that a licensee is conducting business in an  
32    unsafe or injurious manner, the commissioner shall, by written  
33    order addressed to the licensee, direct the discontinuance of the  
34    unsafe or injurious practices. The order shall be effective  
35    immediately, but shall not become final except in accordance with  
36    the provisions of Section 21866.

37    28162. Whenever, in the opinion of the commissioner, a person  
38    is engaged in the business of servicing student loans within this  
39    state, either actually or through subterfuge, without a license from  
40    the commissioner, the commissioner may order that person to

1 desist and refrain. If, within 30 days after an order is served, a  
2 request for a hearing is filed in writing and the hearing is not held  
3 within 60 days of the filing, the order is rescinded. This section  
4 does not apply to persons exempted under subdivision (b) of  
5 Section 28106.

6 28164. If, after investigation, the commissioner has reasonable  
7 grounds to believe that a licensee has violated its articles of  
8 incorporation or any law or rule binding upon it, the commissioner  
9 shall, by written order addressed to the licensee, direct the  
10 discontinuance of the violation. The order shall be effective  
11 immediately, but shall not become final except in accordance with  
12 the provisions of Section 28166.

13 28166. (a) No order issued pursuant to this chapter may  
14 become final except after notice to the affected licensee of the  
15 commissioner's intention to make the order final and of the reasons  
16 for the finding. The commissioner shall also notify the licensee  
17 that upon receiving a request, the matter will be set for hearing to  
18 commence within 15 business days after receipt. The licensee may  
19 consent to have the hearing commence at a later date. If no hearing  
20 is requested within 30 days after the mailing or service of the  
21 required notice, and none is ordered by the commissioner, the order  
22 may become final without hearing and the licensee shall  
23 immediately discontinue the practices named in the order. If a  
24 hearing is requested or ordered, it shall be held in accordance with  
25 the provisions of the Administrative Procedure Act (Chapter 5  
26 (commencing with Section 11500) of Part 1 of Division 3 of Title  
27 2 of the Government Code), and the commissioner shall have all  
28 of the powers granted under that act. If, upon the hearing, it appears  
29 to the commissioner that the licensee is conducting business in an  
30 unsafe and injurious manner or is violating its articles of  
31 incorporation or any law of this division, or any rule binding upon  
32 it, the commissioner shall make the order of discontinuance final  
33 and the licensee shall immediately discontinue the practices named  
34 in the order.

35 (b) The licensee has 10 days after an order is made final to  
36 commence an action to restrain enforcement of the order. If the  
37 enforcement of the order is not enjoined within 10 days by the  
38 court in which the action is brought, the licensee shall comply with  
39 the order.

1     28168. (a) The commissioner may issue an order suspending  
2 or revoking a license if, after notice and an opportunity for hearing,  
3 the commissioner finds any of the following:

4     (1) The licensee is violating this division or a regulation adopted  
5 or an order issued under this division.

6     (2) The licensee does not cooperate with an examination or  
7 investigation by the commissioner.

8     (3) The licensee engages in fraud, intentional misrepresentation,  
9 or gross negligence in servicing a student loan.

10    (4) The competence, experience, character, or general fitness  
11 of the licensee, an individual specified in Section 28120, or any  
12 person responsible for servicing a student loan for the licensee  
13 indicates that it is not in the public interest to permit the licensee  
14 to continue servicing student loans.

15    (5) The licensee engages in an unsafe or unsound practice.

16    (6) The licensee is insolvent, suspends payment of its  
17 obligations, or makes a general assignment for the benefit of its  
18 creditors.

19    (7) Any fact or condition exists that, if it had existed at the time  
20 the licensee applied for the license, would have been grounds for  
21 denying the application.

22    (b) In determining whether a licensee is engaging in an unsafe  
23 or unsound practice, the commissioner may consider the size and  
24 condition of the licensee's provision of servicing, the magnitude  
25 of the loss, the gravity of the violation of this division, and the  
26 previous conduct of the persons involved.

27    28170. (a) If, after investigation, the commissioner has  
28 reasonable grounds to believe that a person has engaged or is about  
29 to engage in any act or practice constituting a violation of any  
30 provision of this division or any rule or order hereunder, the  
31 commissioner may bring an action to enjoin the acts or practices  
32 or to enforce compliance with this division or any rule or order  
33 adopted under this division. The action shall be brought in the  
34 name of the people of the State of California in the superior court.  
35 Upon a proper showing, a permanent or preliminary injunction,  
36 restraining order, or writ of mandate shall be granted. A receiver,  
37 monitor, conservator, or other designated fiduciary or officer of  
38 the court, which may include the commissioner, may be appointed  
39 for the defendant or the defendant's assets. Any other ancillary  
40 relief may be granted as appropriate.

1 A receiver, monitor, conservator, or other designated fiduciary  
2 or officer of the court appointed by the superior court pursuant to  
3 this section may, with the approval of the court, exercise any or  
4 all of the powers of the defendant's officers, directors, partners,  
5 trustees, or persons who exercise similar powers and perform  
6 similar duties. The powers include the filing of a petition for  
7 bankruptcy. No action at law or in equity may be maintained by  
8 any party against the commissioner, or a receiver, monitor,  
9 conservator, or other designated fiduciary or officer of the court,  
10 by reason of their exercising these powers or performing these  
11 duties pursuant to the order of, or with the approval of, the superior  
12 court.

13 (b) If the commissioner determines it is in the public interest,  
14 the commissioner may include in any action authorized by  
15 subdivision (a) a claim for ancillary relief. The ancillary relief may  
16 include, but not be limited to, restitution or disgorgement or  
17 damages on behalf of the persons injured by the act or practice  
18 constituting the subject matter of the action. The court shall have  
19 jurisdiction to award additional relief.

20 *28171. (a) If, upon inspection, examination, or investigation,*  
21 *the commissioner has cause to believe that a licensee or a person*  
22 *is violating or has violated any provision of this division or any*  
23 *rule or order thereunder, the commissioner or his or her designee*  
24 *may issue a citation to that licensee or person in writing, describing*  
25 *with particularity the basis of the citation. Each citation may*  
26 *contain an order to correct the violation or violations identified*  
27 *and provide a reasonable time period or periods by which the*  
28 *violation or violations must be corrected. In addition, each citation*  
29 *may assess an administrative fine not to exceed two thousand five*  
30 *hundred dollars (\$2,500) that shall be deposited in the State*  
31 *Corporations Fund. In assessing a fine, the commissioner shall*  
32 *give due consideration to the appropriateness of the amount of the*  
33 *fine with respect to factors including the gravity of the violation,*  
34 *the good faith of the person or licensees cited, and the history of*  
35 *previous violations. A citation issued and a fine assessed pursuant*  
36 *to this section, while constituting punishment for a violation of*  
37 *law, shall be in lieu of other administrative discipline by the*  
38 *commissioner for the offense or offenses cited, and the citation*  
39 *and fine payment thereof by a licensee shall not be reported as*  
40 *disciplinary action taken by the commissioner.*

1     ***(b) Notwithstanding subdivision (a), nothing in this section shall***  
2 ***prevent the commissioner from issuing an order to desist and***  
3 ***refrain from engaging in a specific business or activity or activities,***  
4 ***or an order to suspend all business operations to a person or***  
5 ***licensee who is engaged in or who has engaged in continued or***  
6 ***repeated violations of this division. In any of these circumstances,***  
7 ***the sanctions authorized under this section shall be separate from,***  
8 ***and in addition to, all other administrative, civil, or criminal***  
9 ***remedies.***

10     ***(c) If, within 30 days from the receipt of the citation, the person***  
11 ***cited fails to notify the department that the person intends to***  
12 ***request a hearing pursuant to Section 28176, the citation shall be***  
13 ***deemed final.***

14     ***(d) After the exhaustion of the review procedures provided for***  
15 ***in this section, the commissioner may apply to the appropriate***  
16 ***superior court for a judgment in the amount of the administrative***  
17 ***fine and an order compelling the cited person to comply with the***  
18 ***order of the commissioner. The application, which shall include***  
19 ***a certified copy of the final order of the commissioner, shall***  
20 ***constitute a sufficient showing to warrant the issuance of the***  
21 ***judgment and order.***

22     **28172. (a)** Any person who violates a provision of this  
23 division, or any rule or order under this division, shall be liable  
24 for a civil penalty not to exceed two thousand five hundred dollars  
25 (\$2,500) for each violation. This penalty shall be assessed and  
26 recovered in a civil action brought in the name of the people of  
27 the State of California by the commissioner in any court of  
28 competent jurisdiction.

29     **(b)** As applied to the penalties for acts in violation of this  
30 division, the remedies provided by this section and by other  
31 sections of this division are not exclusive, and may be sought and  
32 employed in any combination to enforce the provisions of this  
33 division.

34     **28174. (a)** The commissioner may refer the evidence that is  
35 available concerning any violation of this division or of any rule  
36 or order adopted under this division to the district attorney of the  
37 county in which the violation occurred. The district attorney may,  
38 with or without the commissioner's referral, institute criminal  
39 proceedings under this division. The commissioner and his or her  
40 counsel, deputies, or assistants may, upon request of the district

1 attorney, assist the district attorney in presenting the law or facts  
2 at the trial.

3 (b) After an examination, investigation, or hearing under this  
4 division, if the commissioner deems it of public interest or  
5 advantage, he or she may certify a record to the proper prosecuting  
6 official of the county or city in which the act complained of,  
7 examined, or investigated occurred.

8 28176. All hearings provided for in this division shall be  
9 conducted in accordance with the provisions of Chapter 5  
10 (commencing with Section 11500) of Part 1 of Division 3 of Title  
11 2 of the Government Code. The commissioner has all the powers  
12 granted therein.

13  
14 CHAPTER 6. MISCELLANEOUS  
15

16 28178. If any provision of this division or the application  
17 thereof to any person or circumstances is held invalid, illegal, or  
18 unenforceable, such invalidity, illegality, or unenforceability shall  
19 not affect other provisions or applications of this division ~~which~~  
20 *that* can be given effect without the invalid, illegal, or  
21 unenforceable provision or application, and, to this end, the  
22 provisions of this division are declared to be severable.

23 28180. The rights and remedies provided in this division are  
24 in addition to any other rights and remedies provided by law.

25 28181. *This division shall become operative on July 1, 2018.*  
26 *The commissioner may take any necessary actions to exercise the*  
27 *authority pursuant to subdivision (a) of Section 28110, on and*  
28 *after January 1, 2017.*

29 SEC. 3. No reimbursement is required by this act pursuant to  
30 Section 6 of Article XIII B of the California Constitution because  
31 the only costs that may be incurred by a local agency or school  
32 district will be incurred because this act creates a new crime or  
33 infraction, eliminates a crime or infraction, or changes the penalty  
34 for a crime or infraction, within the meaning of Section 17556 of  
35 the Government Code, or changes the definition of a crime within  
36 the meaning of Section 6 of Article XIII B of the California  
37 Constitution.

38 SEC. 4. The Legislature finds and declares that Section 2 of  
39 this act, which adds Sections 28150 and ~~28153~~ 28154 to the  
40 Financial Code, imposes a limitation on the public's right of access

1 to the meetings of public bodies or the writings of public officials  
2 and agencies within the meaning of Section 3 of Article I of the  
3 California Constitution. Pursuant to that constitutional provision,  
4 the Legislature makes the following findings to demonstrate the  
5 interest protected by this limitation and the need for protecting  
6 that interest:  
7 Protecting from public disclosure limited confidential  
8 information provided by licensees to the Commissioner of Business  
9 Oversight properly balances protecting legitimate private economic  
10 interests and public interests in effective regulation.

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